



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 5, 1992

Honorable O. H. "Ike" Harris
Chairman
Senate Jurisprudence Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

Letter Opinion No. 92-59

Re: Validity of requirements of Real Estate License Act that applicants for real estate inspector or inspector-in-training licenses have completed certain numbers of supervised real estate inspections (RQ-431)

Dear Senator Harris:

You ask whether section 23 of article 6573a, V.T.C.S., the Real Estate License Act, particularly those provisions requiring applicants for real estate inspector and inspector-in-training licenses to have completed, respectively, 175 and 25 supervised real estate inspections, is "unlawfully discriminatory," and therefore unconstitutional. You suggest that the requirements may be "unduly burdensome to individuals performing inspections in areas with low demand for inspections."

We understand your concern to be whether the above-mentioned licensure requirements of article 6573a contravene the Equal Protection provisions of the state and federal constitutions. See U.S. Const. amend. XIV; Tex. Const. art. I, § 3. As noted in Attorney General Opinion DM-42 (1991), equal protection challenges to state occupational regulations are ordinarily reviewed under the so-called "rational basis test." While state statutory schemes are given considerable deference and are generally upheld under such a test, ultimate resolution of the issue of a statute's constitutionality under the rational basis test will usually require findings of fact which cannot be undertaken in the opinion process. In particular, we think that determining whether the specific numbers of supervised inspections required of license applicants by article 6573a have a "rational basis" would require such findings of fact.

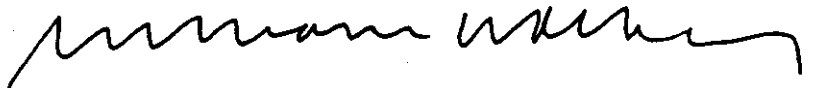
We do note, however, that, in our opinion, there is little likelihood that a court would find that the uniform statewide application of the licensure regulations lacks a rational basis. That the imposition of uniform statewide licensure

requirements has a "rational basis" for equal protection purposes is, we think, supported by the fact that licensure under the statute permits licensees to act as inspectors or inspectors-in-training *statewide*. See *id.* § 23(c). Similarly, the fact that the provisions of article 6573a do not create statutory classifications, but rather uniformly impose licensure requirements, would, we think, increase the likelihood that a court would uphold the provisions under an equal protection analysis. Ordinarily, equal protection attacks are directed at statutory schemes which create classifications of persons subject to the provisions and thus raise the issue of equitable treatment of persons falling in different classifications.

S U M M A R Y

Determination of the constitutionality of the requirements of the Real Estate License Act that applicants for real estate inspector or inspector-in-training licenses have completed certain numbers of supervised real estate inspections would ultimately require findings of fact. However, that the act imposes uniform statewide requirements rather than differing requirements for different areas would probably survive a constitutional challenge.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'William Walker', with a stylized, wavy line extending from the end.

William Walker
Assistant Attorney General
Opinion Committee